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International Council of Shopping Centers, Inc.

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February 20, 2013

To: Senator Steve Cassano, Co-Chairman
Representative Jason Rojas, Co-Chairman, and
Members of the Planning and Development Committee

From: Wayne Cobleigh, Connecticut State Director,
International Council of Shopping Centers (ICSC)

Subject: Proposed Senate Bill No. 814 An Act Concerning Intervention in
Permit Proceedings Pursuant to the Environmental Protection Act of 1971

The ICSC was founded in 1957 as a professional trade association for the shopping center industry. We have nearly 600 members in Connecticut and almost 60,000 members in about 90 countries. ICSC members include shopping center owners, developers, managers, marketing specialists, investors, retailers and brokers, engineers, architects, contractors, academics, students, public officials and environmental/geotechnical engineering firms like my employer, GZA GeoEnvironmental, Inc. (GZA) with three offices and 60 employees in Connecticut. ICSC members are interested in land use permitting with: (1) a level playing field, (2) transparency, (3) certainty in what constitutes a complete application, and (4) sound governance. Permits without excessive delay are necessary to attract tenants and investment; and to design, construct, expand and renovate retail centers throughout the 169 municipalities in Connecticut.

My experience with statute 22a-19 is extensive and my perspective for requesting your full support in advancing SB 343 is unique. I am in my third year as a volunteer State Director for ICSC in Connecticut. I work for an environmental consultant firm that would benefit financially if environmental interventions without legitimate claims and evidence of unreasonable pollution were allowed to continue without the advancement of this bill. Despite the court standard of requiring an intervention petition to state specific factual allegations of the environmental harm opined in the Nizardo State Supreme Court case from 2002, interveners benefit financially and in extending the delay of a permit when they put the burden on the permit applicant to retain an environmental consultant to opine and address the intervenor's concerns about unreasonable pollution of the environment to a land use commission or a court. An environmental consultant for the permit applicant is an additional expense when required to address the facts of an alleged claim for environmental harm, especially when claims are not based in fact, sound science or substantial evidence.

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As someone in the environmental consulting business in Connecticut since 1982, the volume of local, state and federal environmental statutes, laws, ordinances, guidelines and court decisions has increased incredibly over my career. Legal and environmental professionals now need to specialize because the environmental and land use regulations are so voluminous. Connecticut DEEP is focusing on transformation and Lean management methods now because our State needs to change outdated and ineffective regulations that stifle responsible growth of our economy. **We are not regulating in 1971 anymore. We strongly support reform of 22a-19 and transparent and responsible environmental interventions that meet the governance expected in the 21st century.**

Abuse of the land use permit process is not limited to interested citizens. The Wall Street Journal article author, Ann Zimmerman, made front page news on June 7, 2010 exposing the Saint Consulting Group as being funded by rival supermarket chains, even posing as citizen groups to stop rival chains from obtaining permits. **Zimmerman reviewed hundreds of pages of Saint documents and reported that Saint Consulting Group conducted about 1500 campaigns in 44 states, of which the owner Michael P. Saint indicated about 500 have involved trying to “block a development” and most of those have been clandestine.** Clearly secretly funded interventions are good business for The Saint Group but not for their opponents. Off the record lawyers have acknowledged to me or not denied that this practice happens in Connecticut. ICSC supports transparency for the environmental intervenor of funding sources that will help make such clandestine funders accountable when they fund an intervention as a method to delay or reduce market competition. Although we support item 2 of S.B. 814 to make secret funding more transparent, a business competitor can assert that intervention is legally protected speech under the First Amendment of the Constitution and complies with the Noerr-Pennington doctrine.

Regulating the funding of environmental intervention campaigns will not get at the main problem, which is the use of the courts and litigation process to delay permit processing and approval by mere speculation that the public’s trust in the environment is threatened without producing legitimate proof, sound science, facts or substantial evidence by the one claiming the harm.

Abuse of 22a-19 as a threat to the economic development and job creation is even more damaging to our economy going forward as we address the high unemployment Connecticut has been experiencing since late 2008. Statistics may indicate very few interventions reach the courts as a percentage of land use permits, but many developers or tenants lose interests in properties when interventions are proposed. Many developers do not make it to the permit application; they end the project to find another opportunity, because delays are too costly for most projects to sustain.

After 40 years of 22a-19, there is a more legitimate and responsible way for a citizen to intervene and result in genuine environmental protection. Please codify the Nizardo case of 2002 and set reasonable schedules for intervenors to act in good faith and that honor the municipal and land use commissions’ volunteered time and community activism. I have enclosed proposed revisions for your consideration. Thank you for considering my comments.

Proposed substitute language for SB 814

New language is underlined; omitted language is in [brackets].

Sec. 22a-19 Administrative Proceedings.

1 (a)(1) In any administrative proceeding where a public hearing is required
2 or held, and in any judicial review thereof made available by law, the Attorney
3 General, any political subdivision of the state, any instrumentality or agency of
4 the state or of a political subdivision thereof, any person, partnership,
5 corporation, association, organization or other legal entity may intervene as a
6 party on the filing of a verified pleading demonstrating [asserting] that the
7 proceeding or action for judicial review involves conduct [which has, or which]
8 that will, or that is reasonably likely to [have the effect of unreasonably polluting,
9 impairing or destroying] unreasonably pollute, impair or destroy the public trust
10 in the air, water or other natural resources of the state.

11
12 (2) The verified pleading shall: (A) contain specific factual allegations
13 setting forth the environmental issue that the intervenor intends to raise, and (B)
14 state the material facts upon which the intervention is based in sufficient detail to
15 allow the reviewing authority to determine from the face of the petition whether
16 the intervention implicates an issue within the reviewing authority's jurisdiction.

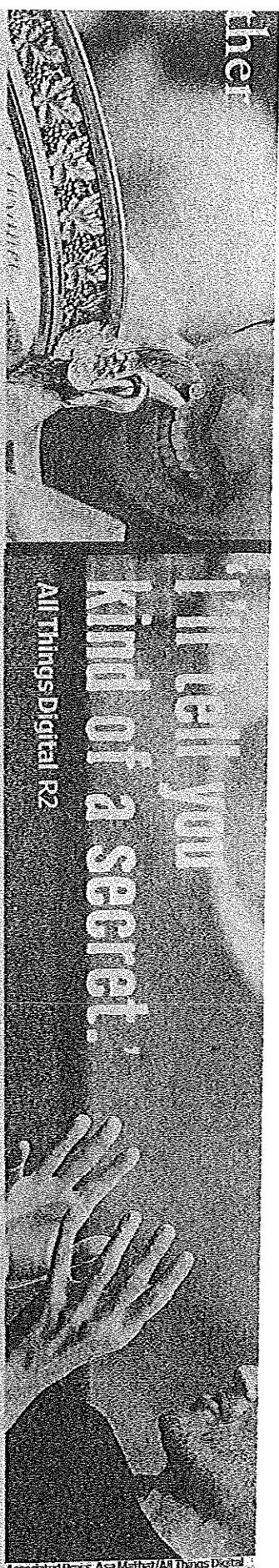
17
18 (3) In administrative proceedings to which statutory deadlines apply, the
19 verified petition must be submitted within the requirements of the statutory
20 deadlines applicable to accepting evidence or testimony, giving the agency
21 involved adequate time to consider and rule on the petition. In court
22 proceedings, verified petitions must be submitted within the deadlines that
23 otherwise apply to pleadings in such proceedings. Petitions shall be rejected by
24 administrative agencies or courts if not filed within the applicable time frames
25 for such proceedings. Petitions rejected for untimely filing are not subject to
26 appeal.

27
28 (b) In any administrative, licensing or other proceeding, the agency
29 shall consider the alleged unreasonable pollution impairment or destruction of
30 the public trust in the air, water or other natural resources of the state and no
31 conduct shall be authorized or approved which does, or is reasonably likely to,
32 have such effect as long as, considering all relevant surrounding circumstances
33 and factors, there is a feasible and prudent alternative consistent with the
34 reasonable requirements of the public health, safety and welfare.

35
36 (c)(1) The decision of an administrative agency may be appealed to
37 Superior Court by intervenors whose petition to intervene in the underlying
38 matter was granted by the agency.

39
40 (2) In the case of an appeal to Superior Court from a decision of an
41 administrative agency, a party may intervene in that appeal under authority of
42 this section only if that party has successfully intervened in the administrative
43 proceeding from which the appeal is taken.

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kind of a secret.
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Associated Press, Asa Mehta/All Things Digital

THE WALL STREET JOURNAL.

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◆ 204.56 -2.0% NASDAQ 2219.17 ▲ 1.7% NIKKEI 9901.19 ▲ 1.4% STOXX 50 2375.56 ▼ 0.6% 10-YR TREASURY ▲ 28.32, yield 3.197% OIL \$71.51 ▼ \$2.46 EURO \$1.1966 YEN 91.69

Spain plans to
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Build America
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John Pritzker is
... into the hotel
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... up on Europe. C5

What's Ahead—

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... elections are held
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■ **Tousands of soccer fans** stampeded outside a stadium in South Africa before a game, leaving 15 people injured. A15

■ **Storms swept through the** Midwest, killing at least seven people. A tornado in Ohio destroyed dozens of homes. A8

■ **A car bomb outside a Bagh-** dad police station killed five people, in the deadliest of several attacks in the Iraqi capital.

■ **Thousands of Poles filed a** Warsaw square for the beatification of a priest killed by the communist regime in 1984. A14

■ **The Education Department** was urged to curtail a college accrediting group's power. A8

Rival Chains Secretly Fund Opposition to Wal-Mart

By ANN ZIMMERMAN

MUNDELLEN, Ill.—Robert Brownson long believed that his proposed development here, with its 200,000-square-foot Wal-Mart Supercenter, was being held hostage by nearby homeowners.

He had seen them protesting at city hall, and they had filed a lawsuit to stop the project. What he didn't know was that the locals were getting a lot of help. A grocery chain with nine stores in the area had hired Saint Consulting Group to secretly run the anti-development campaign. Saint is a specialist at fighting proposed Wal-Marts, and it uses tactics it describes as "black arts."

As Wal-Mart Stores Inc. has grown into the largest grocery seller in the U.S., similar battles have played out in hundreds of

cases, large supermarket chains including SuperValu Inc., Safeway Inc. and Ahold NV have retained Saint Consulting to block Wal-Mart, according to hundreds of pages of Saint documents reviewed by The Wall Street Journal and interviews with former employees.

Saint has jokingly called its staff the "Wal-Mart killers." Founder, Michael Saint, the company's founder, declines to discuss specific clients or campaigns. When read a partial list of the company's supermarket clients, he responds that "if those names are true, I would say I was proud that some of the largest, most sophisticated companies were so pleased with our success and discretion that they hired us over the years."

In many cases, the pitched battles have more than doubled the amount of time it takes Wal-Mart to open a store, says a person close to the company. And the fights generate negative publicity for the retailer.

A Wal-Mart spokesman declined to comment on activities Saint has undertaken on behalf of its competitors.

In Mundelein, a town of 35,000 about 20 miles northwest of Chicago, it was SuperValu, a national grocer based in Eden Prairie, Minn., that hired Saint to work behind the scenes, accord-

cials spent the weekend devising a fiscal plan after the country saw runs on both its currency and its debt Friday. Officials have backtracked on the default threats and pledged the country would cut spending instead.

Though most American investors still doubt the U.S. economy will sink into a double-dip recession, they increasingly fear that growth could slow without con-

To spend or to save A2

■ G-20 finance ministers near deal on bank reserves A10

■ Fed unlikely to raise rates C1

Please turn to page A4

Stock Jitters

After declining earlier this year, stock-market volatility has spiked in recent weeks.

Chicago Board Options Exchange market volatility index or VIX

45

35

25

15

Rival Retail Chains Secretly Fund Opposition to Wal-Mart

Continued from Page One

Wal-Mart from competing with its nine Jewel-Osco supermarkets located within three to ten miles of the proposed shopping center, the documents indicate.

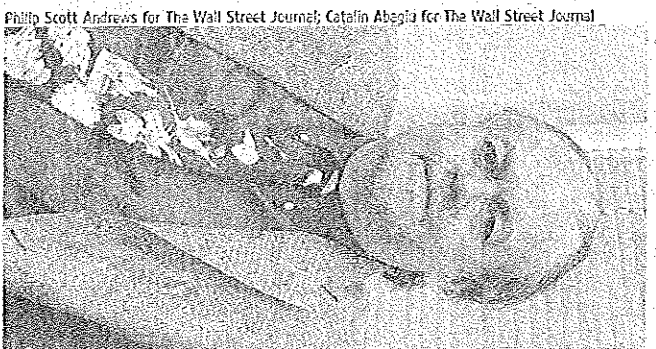
City officials say the effort stalled the development for three years and cost Mundelein millions in lost property and sales taxes.

Mr. Brownson, who has developed shopping centers in 15 states over 25 years, says he learned about Saint's involvement only recently when someone phoned him and spilled the news. "A huge national company conducts a dirty tricks campaign for its own goals and a city and a developer become collateral damage," he complains.

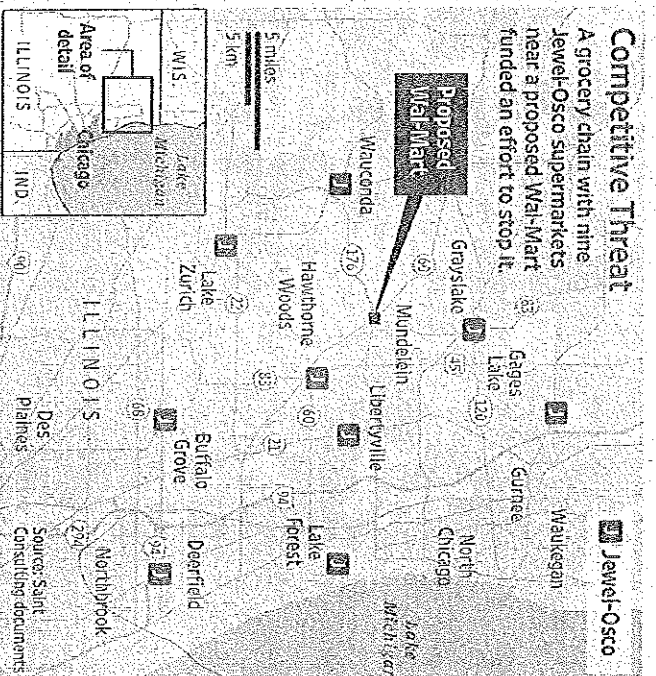
Supervalue didn't return calls for comment. Mr. Saint declines to discuss the situation in Mundelein. In general, he says, "developers always say the world is coming to an end because the project that would have made them millions wasn't approved."

Mr. Saint, a former newspaper reporter and political press secretary, founded his firm 26 years ago. It specializes in using political-campaign tactics—petition drives, phone banks, websites—to build support for or against controversial projects, from oil refineries and shopping centers to quarries and landfills. Over the years, it has conducted about 1,500 campaigns in 44 states. Mr. Saint says about 500 have involved trying to block a development, and most of those have been clandestine.

For the typical anti-Wal-Mart assignment, a Saint manager will drop into town using an assumed name to create or take control of local opposition, according to former Saint employees. They flood local politicians with calls, using multiple phones to make it appear that the calls are coming



Philip Scott Andrews for The Wall Street Journal; Catalin Abegia for The Wall Street Journal



Several former colleagues of the baseball-loving project manager say he frequently told the story, which is false, in connection with Wal-Mart projects.

Mr. Budwick says the project manager told him that the fight in Mundelein would be lengthy and expensive, but it would cost the residents nothing because he was involved in politics and had sympathetic donors willing to fund their campaign.

"I didn't know where the money was coming from, and didn't want to know," says John Abraham, a landscape-company owner whose large home about the development site.

The project manager arranged for a lawyer, William Graft, who had experience fighting land-use battles, to represent neighbors who opposed the development, according to Saint documents. Although the public hearing on the development was packed with opponents, according to city trustee Ed Sullivan the city's board of trustees approved the project in July 2001.

Mr. Graft filed suit on behalf of four local residents with properties adjacent to the proposed development, appealing the board's decision and claiming their rights had been violated. He sent monthly bills ranging from \$20,000 to \$55,000 to the project manager, who forwarded them to Saint, according to copies of the bills viewed by the Journal. Mr. Graft confirms that Saint paid those bills.

The suit remained in court for two and a half years—until March 26 of this year, when judge ruled in favor of the city, saying its decision to approve the development was not "capricious, irrational or arbitrary."

The development is still in limbo. The plaintiffs have asked the judge to reconsider his decision. The developer, Mr. Brownson, who has developed shopping centers in 15 states over 25 years, says he learned about Saint's involvement only recently when someone phoned him and spilled the news. "A huge national company conducts a dirty tricks campaign for its own goals and a city and a developer become collateral damage," he complains.

P. Michael Saint, left, is founder of Saint Consulting Group, which specializes in using political-campaign tactics to build support for or against developments. Many of its efforts to block projects are clandestine. Developer Robert Brownson, right, at the site of a stalled Wal-Mart in Illinois.

ees, who have been followed, threatened and harassed by the opposition."

Safeway, a national chain based in Pleasanton, Calif., retained Saint to thwart Wal-Mart Supercenters in more than 30 towns in California, Oregon, Washington and Hawaii in recent years, according to a Saint project list and interviews with former employees. Former Saint employees say much of the work consisted of training Safeway's unionized workers to fight land-use battles, including how to speak at public hearings.

Former Saint workers say the union sometimes pays a portion of Saint's fees. "The work we've funded Saint to do to preserve our market share and our jobs is within our First Amendment rights," says Jill Cashen, spokeswoman for the United Food and Commercial Workers Union. Safeway declined to comment.

month of Saint staff time, according to a preliminary budget. Locally, there was strong opposition from a citizens group that wanted to preserve the proposed site as farmland and was concerned about traffic. Nevertheless, Wal-Mart received conditional approval.

Before construction began, with support from Saint, the opponents filed suit, claiming that when the land was rezoned for commercial use three years earlier, neighbors had not been properly notified.

One member of the citizens group, Kip Kelly, says a woman he assumed was from a labor group or anti-Wal-Mart coalition had offered to fund the effort. Former Saint employees say the woman was a Saint operative and that Saint was paying the group's legal bills through Saint. Tracy Cadzow, the lawyer who represented the group, says she

started, and I was told to stop paying the attorney," says a former Saint employee.

Town officials reapproved commercial zoning for the land, this time giving proper notification to homeowners, which rendered the lawsuit moot. Saint and its parent company, Abhold, did not return calls for comment.

Asked about the situation, Mr. Saint said his company is an advocate for its clients but doesn't determine overall strategy. "If it's legal to perform a service, we'll do it," he said.

Mr. Saint says there is nothing illegal about a company trying to derail a competitor's project. Companies have legal protection under the First Amendment for using a government or legal process to thwart competition, even if they do so secretly, he says.

The protection is known as the Noerr-Pennington doctrine,

because they care about zoning." Former Saint employees say that the goal of many legal or political challenges was merely to delay projects.

"That may be the result," responds Mr. Saint. "But our goal is always to kill Wal-Mart."

In Mundelein, where Supervalue wanted to protect its Jewel-Osco stores from Wal-Mart, Saint first focused on a vote on the city's Plan Commission, scheduled for May 2007. Saint documents indicate. Saint's Chicago-based regional director, Jay Vincent, who drives a Honda CRV with the license plates BJKOPS 1, assigned the job to a project manager, Saint documents indicate. That manager, who is a baseball fan, borrowed an alias for each of his assignments from a major leaguer. For the Mundelein job, he took the name of a former catcher for the Minnesota

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